

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

In Re:	§	
	§	Case No. 14-10447-tmd
FIRED UP, INC.	§	(Chapter 11)
	§	
Debtor ¹	§	

DEBTOR'S OBJECTION TO PROOF OF CLAIM [NO. 12-3]
FILED BY DALLAS COUNTY

A hearing will be conducted on this matter on November 5, 2015, at 1:30 pm in Courtroom No. 1, 903 San Jacinto, Austin, TX 78701.

If you object to the relief requested, you must respond in writing, specifically answering each paragraph of this pleading. Unless otherwise directed by the court, you must file your response with the clerk of the bankruptcy court within 21 days from the date you were served with this pleading. You must serve a copy of your response on the person who sent you the notice; otherwise, the court may treat the pleading as unopposed and grant the relief requested.

TO THE HONORABLE JUDGE OF SAID COURT:

Fired Up, Inc. ("Debtor") hereby files this *Objection to Proof of Claim [No. 12-3] Filed by Dallas County* ("Objection"), stating in support thereof the following:

Jurisdiction

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.

This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

2. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The Objection itself is grounded, *inter alia*, in Fed. R. Bankr. P. 3001 and 3007.

¹ Until February 26, 2014, Debtor's business was being operated partially by the Debtor, partially by Kona Restaurant Group, Inc. ("KRG"), a Delaware corporation wholly owned by the Debtor, and partially by Carino's Italian Kitchen, Inc. ("CIK"), a Delaware corporation wholly owned by KRG. CIK was merged into KRG in Delaware and KRG was merged into the Debtor, a Texas corporation, in Texas

Background

4. On March 27, 2014 (the “Petition Date”), Fired Up, Inc. filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Western District of Texas, Austin Division (“Court”), thereby commencing this chapter 11 case (“Case”). A creditors’ committee was appointed pursuant to 11 U.S.C. § 1102. It continued in possession of its property and operated its business as a debtor-in-possession until December 19, 2014, when the Court entered its Order Confirming the Debtor and Unsecured Creditors Committee’s Amended Joint Plan of Reorganization Dated October 29, 2014, as Modified (“Plan”). Debtor since that date has continued in possession of its property and operating its business as the Reorganized Debtor according to the terms of the Plan

5. On June 22, 2015, Dallas County filed Claim No. 12-3 in the amount of \$7,019.79 asserting business personal property taxes owed. Dallas County, through counsel, has indicated that the amount due upon such claim as of September 2015 is now \$10,166.88.

6. On July 15, 2015, the Court entered an order extending the deadline to file an objection to the claims of certain taxing authorities, including Dallas County, until September 30, 2015 (Dkt. #773).

Objections to the Proof of Claim

7. The claim of Dallas County consists of business personal property taxes owing for the years of 2013 and 2014.

8. The Debtor paid the 2014 business personal property taxes in the amount of \$2,700.05 on February 2, 2015 by check no. 1073672. Therefore, Debtor objects to the claim for 2014 business personal property taxes.

9. Debtor acknowledges that it owes the sum of \$6,413.94 as of September 30, 2015 for business personal property taxes for 2013.

Requested Relief

10. Debtor request that Claim No. 12-3 be allowed in the reduced amount of \$6,413.94 as of September 30, 2015 with additional amounts accruing as provided by state law.

WHEREFORE, Debtor **Fired Up, Inc.**, respectfully requests the relief sought above and for such other and further relief as this Court may deem just.

DATED: September 25, 2015.

Respectfully submitted,

BARRON & NEWBURGER, P.C.

1212 Guadalupe, Suite 104
Austin, Texas 78701
(512) 476-9103 Ext. 220
(512) 476-9253 Facsimile

By: /s/ Stephen W. Sather
Barbara M. Barron (SBN 01817300)
Stephen W. Sather (SBN 17657520)

ATTORNEYS FOR THE REORGANIZED DEBTOR

CERTIFICATE OF SERVICE

I certify that the foregoing was served by electronic mail on September 25, 2015, to all parties listed on the Twelfth Master Limited Service List attached hereto and made a part hereof and electronically by the Court's ECF system to all parties registered to receive such service as well as to the following by United States Mail, First Class, Postage Prepaid:

Elizabeth Weller
LINEBARGER GOGGAN BLAIR &
SAMPSON, LLP
2777 N. Stemmons Freeway
Suite 1000
DALLAS, TX 75207

**DALLAS COUNTY
2777 N. STEMMONS FREEWAY
SUITE 1000
DALLAS, TX 75207**

/s/ Barbara M. Barron

United States Trustee:

Henry G. Hobbs
Deborah A. Bynum
Office of the U.S. Trustee
903 San Jacinto Blvd., Room 230
Austin, TX 78701
henry.g.hobbs@usdoj.gov
deborah.a.bynum@usdoj.gov

Debtor:

Creed Ford, III
President/CEO
Ford Restaurant Group
1514 RR 620 South
Austin, TX 78734
cford@carinos.com

Margaret B. Smith, CPA
Director of Finance
Ford Restaurant Group
1514 RR 620 South
Austin, TX 78734
msmith@fordrestgrp.com

Attorneys for Debtor:

Barbara M. Barron
Stephen W. Sather
Barron & Newburger, P.C.
1212 Guadalupe Street, Suite 104
Austin, TX 78701
bbarron@bn-lawyers.com
ssather@bn-lawyers.com

John Vernon
The Vernon Law Group, PLLC
4925 Greenville Avenue, Suite 200
Dallas, TX 75206
jvernon@vernonlawgroup.com

Kareem Hajjar
Hajjar Sutherland Peters, LLP
3144 Bee Caves Road
Austin, TX 78746
khajjar@legalstrategy.com

20 Largest Unsecured Creditors:

AEI Accredited Investor Fund 2002
Attn: Brian Schulz
1300 Wells Fargo Place
30 East Seventh Street
St. Paul, MN 55101
bschulz@aeifunds.com

AEI Fund Management, Inc.
Attn: Brian Schulz
1300 Wells Fargo Place
30 East Seventh Street
St. Paul, MN 55101
bschulz@aeifunds.com

ARC CAFÉ, LLC
American Realty Capital
Attn: Cindy Dip
200 Dryden Road, Suite 1100
Dresher, PA 19025
cdip@arlcapi.com

Cassidy Turley Midwest, Inc.
Attn: Brian Schulz
1300 Wells Fargo Place
30 East Seventh Street
St. Paul, MN 55101
bschulz@aeifunds.com

Food Services of America
Attn: Lee Clark
P.O. Box 839
Meridian, ID 83680
lee_clark@fsafood.com
boise_ar@fsafood.com

GE Capital Franchise Finance Corp.
c/o Jeffrey T. Wegner
Kutak Rock, LLP
1650 Farnam Street
Omaha, NE 68102-2186
jeffrey.wegner@kutakrock.com

Gentilis, Inc.
Attn: Moja Lindsey
P.O. Box 810
Redwood Valley, CA 95470
moja2@thelindseycompanies.com

Internal Revenue Service
Special Procedures Staff-Insolvency
P.O. Box 7346
Philadelphia, PA 19101-7346

Magdalena Properties, LLC
c/o R. Spencer Shytles
Graham Bright & Smith, P.C.
5420 LBJ Freeway, Suite 300
Dallas, TX 75240
rss@gbstxlaw.com

Pleasant Ridge Development Co.
Attn: Lou Schickel
11601 Pleasant Ridge Rd., Suite 300
Little Rock, AR 72212
lou@schickels.com
invoices@schickels.com

Mary Raney & Dick P. Wood, Jr., as
Trustees of RC Nelms Jr. Hillcrest Trst
c/o James H. Billingsley
Polsinelli, PC
2501 N. Harwood St., Suite 1900
Dallas, TX 75201
jbillingsley@polsinelli.com

Shamrock Foods-Consolidated
Attn: Jessica Harlow
Department 219
Denver, CO 80291-0219
jessica_harlow@shamrockfoods.com

Texas Comptroller of Public Accts.
c/o Jason A. Starks
Assistant Attorney General
Bankruptcy & Collections Division
P.O. Box 12548
Austin, TX 78711-2548
jason.starks@texasattorneygeneral.gov

Texas Workforce Commission
Attn: Regulatory Integrity Div-SAU
101 E. 15th Street, Room 556
Austin, TX 78778-0001
rid.taxbankruptcy@twc.state.tx.us

Secured Creditors:

FRG Capital, LLC
c/o Blake Rasner
Haley & Olson, P.C.
510 N. Valley Mills Drive, Suite 600
Waco, TX 76710
brasner@haleyolson.com

The Coca-Cola Company
William Kay, Sr. Bankruptcy Advisor
P.O. Box 1734
NAT 2008 Mail Stop
Atlanta, GA 30313
billkaye@jllconsultants.com

CASS
Attn: Frank Garcia
2675 Corporate Exchange Drive
Columbus, OH 43231
fgarcia@cassinfo.com

Prosperity Bank
c/o Lisa C. Fancher
Fritz, Byrne, Head & Harrison, PLLC
98 San Jacinto Blvd., Suite 2000
Austin, TX 78701-4286
lfancher@fbhh.com

Wilmington Center, LLC
Attn: Fay Farzani
9471 Lomitas Avenue
Beverly Hills, CA 90210
fafar101@aol.com

Fintech
Attn: Mandi Aiton
7702 Woodland Center Blvd., #50
Tampa, FL 33614
maiton@fintech.com

Unsecured Creditors Committee:

AEI Income & Growth Fund 24, LLC
Robert P. Johnson
30 Seventh Street East, Suite 1300
St. Paul, MN 55101
bschulz@aeifunds.com

Counsel for Creditors' Committee:

Bradford J. Sandler
Pachulski, Stang, Ziehl & Jones, LLP
919 North Market St., 17th Floor
Wilmington, DE 19801
bsandler@pszjlaw.com

Summit Energy
Attn: Tim Ward
103 Historic Town Square
Lancaster, TX 75146
tim.ward@ems.schneider-electric.com

Ben E. Keith Company (interim chair)
Richard Grasso
P. O. Box 2628
Ft. Worth, TX 76112
rgrasso@benekeith.com

Peter J. Keane
Pachulski, Stang, Ziehl & Jones, LLP
919 North Market St., 17th Floor
Wilmington, DE 19801
pkeane@pszjlaw.com

Wells Fargo Bank, N.A.
c/o James G. Ruiz
Winstead, P.C.
401 Congress Avenue, Suite 2100
Austin, TX 78701
jruiz@winstead.com

Glazier Foods Company
John Miller
11303 Antoine Dr.
Houston, TX 77066
john.miller@glazierfoods.com

Joshua M. Fried
Pachulski, Stang, Ziehl & Jones, LLP
150 California Street, 15th Floor
San Francisco, CA 94111-4500
jfried@pszjlaw.com

Additional Notice:
Sheila Pattison
Special Assistant U.S. Attorney
Internal Revenue Service
300 E. 8th Street, Suite 601
Austin, TX 78701
sheila.pattison@irscounsel.treas.gov

Independent Bank
Charley Rigney
8004 Woodway Dr., Suite 200
Waco, TX 76712
crigney@ibt.com

G. James Landon
Seth E. Meisel
Streusand, Landon & Ozburn, LLP
811 Barton Springs Rd., Suite 811
Austin, TX 78704
landon@slollp.com
meisel@slollp.com

Jason P. Wylie
The Law Office of Jason Wylie
8553 N. Beach St., PMB 316
Fort Worth, TX 76244-4919
jason@jasonwylielaw.com

National Retail Properties, Inc.
David G. Byrnes, Jr.
450 S. Orange Avenue, Suite 900
Orlando, FL 32801
david.byrnes@nnreit.com

Miscellaneous:

Brownsville Public Utilities Board
c/o Gilbert L. Hamberg, Esq.
1038 Darby Drive
Yardley, PA 19067
ghamberg_3@msn.com

John M. Koneck
Fredrikson & Byron, P.A.
200 South Sixth Street, Suite 4000
Minneapolis, MN 55402-1425
jkoneck@fredlaw.com

Mackenzie S. Wallace
Thompson & Knight, LLP
1722 Routh Street, Suite 1500
Dallas, TX 75201
mackenzie.wallace@tklaw.com

Inland American Retail Mgmt., LLC
c/o Kevin M. Newman, Esq.
Menter, Rudin & Trivelpiece, P.C.
308 Maltbie Street, Suite 200
Syracuse, NY 13204-1498
knewman@menterlaw.com

Texas Ad Valorem Taxing Entities
c/o Owen M. Sonik
Perdue, Brandon, Fielder, et al
1235 North Loop West, Suite 600
Houston, TX 77008
houbank@pbfc.com

Timothy E. Hudson
Thompson & Knight, LLP
1722 Routh Street, Suite 1500
Dallas, TX 75201
tim.hudson@tklaw.com

National Retail Properties, LP
c/o David M. Bennett
and Cassandra Ann Sepanik
Thompson & Knight, LLP
1722 Routh Street, Suite 1500
Dallas, TX 75201
david.bennett@tklaw.com
cassandra.sepanik@tklaw.com

Hidalgo County & McAllen ISD
c/o John T. Banks
Perdue, Brandon, Fielder, et al
3301 Northland Drive, Suite 505
Austin, TX 78731
jbanks@pbfc.com

William M. Kane
Traylor, Tompkins & Black, P.C.
751 Horizon Court, Suite 200
Grand Junction, CO 81506-8754
wmk@grandjunctionlaw.com

Texas Ad Valorem Taxing Entities
c/o Lee Gordon
McCreary, Veselka, Bragg & Allen
P.O. Box 1269
Round Rock, TX 78680
lgordon@mvalaw.com

Lubbock Central Appraisal District
c/o Laura J. Monroe
Perdue, Brandon, Fielder, et al
P.O. Box 817
Lubbock, TX 79408
lmunroe@pbfc.com

Notices of Appearance:

Arlington ISD, Mansfield ISD
and Crowley ISD
c/o Elizabeth Banda Calvo
Perdue, Brandon, Fielder, et al
P.O. Box 13430
Arlington, TX 76094-0430
ebcalvo@pbfc.com

Texas Ad Valorem Taxing Entities
c/o Diane W. Sanders
Linebarger Goggan Blair & Sampson
P.O. Box 17428
Austin, TX 78760-7428
austin.bankruptcy@publicans.com

Texas Ad Valorem Taxing Entities
c/o John P. Dillman
Linebarger Goggan Blair & Sampson
P.O. Box 3064
Houston, TX 77253-3064
houston_bankruptcy@publicans.com

Atascocita 1692, LLC
c/o Crystal R. Axelrod
Morgan, Lewis & Bockius, LLP
1000 Louisiana Street, Suite 4000
Houston, TX 77002
caxelrod@morganlewis.com

Texas Ad Valorem Taxing Entities
c/o Elizabeth Weller
Linebarger Goggan Blair & Sampson
2777 N. Stemmons Frwy, Suite 1000
Dallas, TX 75207
dallas.bankruptcy@publicans.com

GS II Meridian Crossroads, LLC
c/o Renee B. Weiss, Esq.
DDR Corp.
P.O. Box 228042
Beachwood, OH 44122
rweiss@ddr.com

Atascocita 1692, LLC
c/o Patrick D. Fleming
Morgan, Lewis & Bockius, LLP
101 Park Avenue
New York, NY 10178
pfleming@morganlewis.com

RioCan America Management, Inc.
c/o R. Spencer Shytles
Graham Bright & Smith, P.C.
5420 LBJ Freeway, Suite 300
Dallas, TX 75240
rss@gbstxlaw.com

ARC CAFE, LLC
c/o William C. Heuer
and Patricia H. Heer
Duane Morris, LLP
1540 Broadway
New York, NY 10036
wheuer@duanemorris.com
phheer@duanemorris.com

Bexar County
c/o David G. Aelvoet
Linebarger Goggan Blair & Sampson
711 Navarro Street, Suite 300
San Antonio, TX 78205
sanantonio.bankruptcy@publicans.com

Tyler Independent School District
c/o Tab Beall
Perdue, Brandon, Fielder, et al
P.O. Box 2007
Tyler, TX 75710-2007
tbeall@pbfc.com
tylbkc@pbfc.com

Missouri Department of Revenue
Bankruptcy Unit
Attn: S. Christopher Conway
P.O. Box 475
Jefferson City, MO 65105-0475
txwdecf@dor.mo.gov

RB River IV, LLC, et al
c/o Jeffrey Ackermann
Durio, McGoffin, Stagg & Ackermann
P.O. Box 51308
Lafayette, LA 70505-1308
jeffackermann@dmsfirm.com

Ecolab, Inc.
c/o Kohner, Mann & Kailas, S.C.
Attn: Samuel C. Wisotzkey
4650 N. Port Washington Rd.
Milwaukee, WI 53212-1059
swisotzkey@kmksc.com

Lewisville ISD
c/o George C. Scherer, Esq.
Law Offices of Robert E. Luna, PC
4411 N. Central Expressway
Dallas, TX 75205
scherer@txschoollaw.com

RB River IV, LLC, et al
and Megaplex Four, Inc.
c/o Marvin E. Sprouse III
Jackson Walker, LLP
100 Congress Avenue, Suite 1100
Austin, TX 78701
msprouse@jw.com

Independent Bank
c/o Steve Turner
Barrett Daffin Frappier Turner, et al
610 West 5th Street, Suite 602
Austin, TX 78701
stevet@bdfgroup.com

Glazier Foods Company
c/o Joseph R. Sgroi
Honigman Miller Schwartz, et al
2290 First National Bank Bldg.
660 Woodward Avenue
Detroit, MI 48226
jsgroi@honigman.com

City of Fort Worth
c/o Christopher B. Mosley
Senior Assistant City Attorney
1000 Throckmorton Street
Fort Worth, TX 76102
chris.mosley@fortworthtexas.gov

Hill Country Texas Galleria, LLC
c/o Joseph D. Martinec
Martinec, Winn, Vickers, et al
919 Congress Avenue, Suite 200
Austin, TX 78701
martinec@mwvmlaw.com

Legacy Air, Inc.
c/o Dennis I. Wilenchik
Wilenchik & Bartness, P.C.
The Wilenchik & Bartness Bldg.
2810 North Third Street
Phoenix, AZ 85004
admin@wb-law.com
DIW@wb-law.com

The City of Laredo
c/o Christina Flores
Flores & Saucedo, PLLC
5517 McPherson, Suite 14
Laredo, TX 78041
cfloreslaw@sbcglobal.net
floressaucedopllc@gmail.com

South Coast Plaza, LLC
c/o Joseph D. Martinec
Martinec, Winn, Vickers, et al
919 Congress Avenue, Suite 200
Austin, TX 78701
martinec@mwvmlaw.com

Additional Parties-in-Interest:

Keri Knows, LLC
P.O. Box 7906
Beverly Hills, CA 90212
kerihausner@aol.com

Megaplex Four, Inc.
c/o Paul M. Hoffmann
Stinson Leonard Street, LLP
1201 Walnut St., Suite 2900
Kansas City, MO 64106
paul.hoffmann@stinsonleonard.com

South Dakota Department of
Revenue & Regulation
Attn: Carol Van Roekel
445 East Capitol Avenue
Pierre, SD 57501-3185
carol.vanroekel@state.sd.us

21875 Katy Freeway, LLC, et al
c/o Steven M. Zelitch
Attorney at Law
261 Old York Rd., Suite 526
Jenkintown, PA 19046
steven@smzlaw.com

Travis County
c/o Kay D. Brock
Assistant Travis County Attorney
P.O. Box 1748
Austin, TX 78767
kay.brock@co.travis.tx.us

The Laredo Community College
c/o George R. Meurer
Kazen, Meurer & Perez
P.O. Box 6237
Laredo, TX 78042-6237
grmeurer@kmp-law.com

PACA Trust Creditors
c/o Robert Yaquinto, Jr.
Sherman & Yaquinto, LLP
509 N. Montclair Avenue
Dallas, TX 75208
rob@syllp.com

DDR Corp.
c/o Robert L. LeHane, Esq.
and Jennifer D. Raviele, Esq.
Kelley Drye & Warren, LLP
101 Park Avenue
New York, NY 10178
kdwbankruptcydepartment@kelleydrye.com
rlehane@kelleydrye.com
jraviele@kelleydrye.com

GE Capital (GEFF and GEBAF)
c/o Lynn H. Butler
Husch Blackwell, LLP
111 Congress Avenue, Suite 1400
Austin, TX 78701
lynn.butler@huschblackwell.com

MB San Antonio Brooks Ltd. Ptship
c/o Adam F. Kinney, Esq.
Menter, Rudin & Trivelpiece, P.C.
308 Maltbie Street, Suite 200
Syracuse, NY 13204-1498
akinney@menterlaw.com

Tom Green CAD
c/o Lanty W. Dean
Dean & Dean
305 W. Twohig
San Angelo, TX 76903
rusty@deandeanlaw.com

Brian A. Kilmer
Chamberlain Hrdlicka
1200 Smith Street, 14th Floor
Houston, TX 77002
brian.kilmer@chamberlainlaw.com

BKD, LLP
Attn: Barry Adamson
14241 Dallas Parkway, Suite 1100
Dallas, TX 75254-2961
badamson@bkd.com

R. Eric Drews
R. Eric Drews, PLLC
13901 Midway Rd., Suite 102-278
Dallas, TX 75244
eric@redrews.com

FTI Consulting, Inc.
c/o Seth E. Meisel
Streusand, Landon & Ozburn, LLP
811 Barton Springs Rd., Suite 811
Austin, TX 78704
steven.simms@fticonsulting.com

Unique Strategies Group, Inc.
5810 Tom Wooten Drive
Austin, TX 78731
dbensimon@austin.rr.com